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SOUTHERN COMPANY
Energy to Serve Your World℠

Mark Friedrichs, Esq.
PI-40
Office of Policy and International Affairs
U.S. Department of Energy
Room 1E190
1000 Independence Avenue, SW
Washington, DC 20585

Re: 10 CFR Part 300 General Guidelines for Voluntary Greenhouse Gas Reporting; Proposed Rule, 70 *Fed. Reg. 15169-15192* (March 24, 2005)

Dear Mr. Friedrichs:

Southern Company respectfully submits the following comments in response to the above-referenced notice and request for comment from the Department of Energy (DOE). We appreciate the opportunity to submit comments on the proposed revised General Guidelines and the Technical Guidelines, and request that they be made part of the public docket.

Southern Company has submitted reports using Form EIA-1605 every year since the program's inception in 1995. For activities through 2003, we have reported total project-based emissions reductions of over 93 million metric tons CO_2 equivalent. As a result, we are very familiar with the voluntary reporting program, its guidelines, and the issues associated with both entity-wide and project-based greenhouse gas (GHG) reporting.

The proposed guidelines from December 2003 listed a number of objectives for improving the 1605(b) greenhouse gas reporting program, including:

- Assure the voluntary reporting program is an effective tool for reaching the 18 percent goal.
- Enhance the measurement accuracy, reliability and verifiability of information reported.
- Develop fair, objective, and practical methods for reporting.
- Encourage reporting at the highest level of aggregation.
- Minimize transactions costs, consistent with other objectives.
- Support independent verification.

Notably, third and fifth objectives in this list (develop fair, objective, and practical methods for reporting and minimize transactions costs) are not explicitly mentioned in the currently proposed guidelines. We assume that this is simply an oversight, because these two elements are *critical* to the overall feasibility and success of the 1605(b) program.

The 1605(b) system is an integral part of the Power Partner's Program to address greenhouse gases (GHGs) that was announced by the President in 2002. As a result, the 1605(b) system should complement, not detract from, the efforts to encourage actions that contribute to the President's goal to reduce the intensity of the economy 18% by 2012. Further, it should encourage entities to focus on GHG emissions from their primary (business) activities (where the greatest opportunities are most likely to occur), both in terms of actions to reduce emissions intensity and the time and resources necessary to report credible intensity reductions from those activities. The definition of "accuracy" in the Technical Guidelines, particularly with respect to the inventorying and reporting aspects, supports this concept:

> *"Resources, both human and financial, that can be devoted to inventory preparation are inevitably limited. In deploying limited resources, reporters should emphasize the emission sources that account for the largest share of total emissions at the possible expense of minor sources."* [Technical G/Ls, Section 1.A.2, page 3.]

According to EIA, electricity generation produced 39% of the CO_2 emissions in the U.S. in 2003. In terms of historic reporting under 1605(b), the power sector has provided almost half of the more than 200 reports submitted in the 2001-2003 timeframe, and reported nearly two thirds of the 417 million metric tons of CO_2-equivalent reported in 2003. Clearly, the continued success of the 1605(b) reporting system under the new guidelines will depend on the extent to which the power sector can and will continue to report. The sector will also play a critical role in determining the success of the President's voluntary program to reduce the emissions intensity of the U.S. economy 18% by 2012. To this end, in December 2004 the power sector signed an agreement with the Department of Energy under its Climate VISION program where it committed to reduce the sector's intensity by the equivalent of 3% to 5% from the 2000 to 2002 level by 2010 to 2012.

Further, the ability to report credible reductions in a generator's emissions intensity (and contribute to the President's goal), and get adequate recognition for them, will influence what actions are actually taken. As a result, the ability of the 1605(b) system to accommodate reductions in the overall emissions intensity of an entity's generation will be critical to success. The ability to include reductions that result from off-system activities will also be important.

Unfortunately, the revised guidelines in the latest draft do more to discourage action and reporting than they do to encourage it. There are a variety of provisions that raise high barriers for electricity generators to register or report under 1605(b) and, as a result, create a strong disincentive to taking action.

We support the comments submitted by the Edison Electric Institute (EEI) regarding needed changes. In the comments below, we highlight our views on some specific areas where important changes are needed.

I. BASIC ELEMENTS THAT DRIVE THE OVERALL STRUCTURE OF THE SYSTEM ESTABLISHED BY THE PROPOSED GUIDELINES PROVIDE NO INCENTIVE, AND IN SOME CASES PROVIDE DISINCENTIVES TO TAKING ACTIONS THAT WOULD CONTRIBUTE TO THE PRESIDENT'S

GOAL. IT ALSO PROVIDES STRONG DISINCENTIVES TO REGISTER OR REPORT ANY ACTIONS THAT ARE TAKEN.

Elements that fall into this category include creation of a two-tiered system (registering and reporting), disallowing the registration or reporting of actions from individual projects (despite the fact that project-based reductions are the basis of the vast majority of GHG purchases and sales in the U.S. emissions markets), and requiring registrants to certify that any of their emissions, reductions, and/or sequestration have not been reported by others. The issues related to these elements as well as other basic features of the system are addressed in the comments submitted by EEI. Rather than repeat the details of those discussions here, we simply refer you to those comments.

II. IF GENERATORS WANT TO REGISTER REDUCTIONS IN THE OVERALL EMISSIONS INTENSITY FROM THEIR GENERATION, THERE ARE SEVERAL KEY PROVISIONS THAT REQUIRE THEM TO PUT SIGNIFICANT TIME AND RESOURCES INTO IDENTIFYING, TRACKING, AND QUANTIFYING RELATIVELY INCONSEQUENTIAL EMISSIONS.

Entities whose primary business is electricity generation are likely to have well in excess of 90 percent of their emissions coming from their generation units. Further, there are highly accurate means for measuring or otherwise quantifying the emissions from those units. We believe that entities achieving credible reductions in the overall emissions intensity of their entire generation fleet are making a meaningful contribution to achieving the President's goal and, therefore, should be allowed to register those emissions reductions.

However, there are several provisions that will prevent many generators from registering such reductions and, therefore, getting adequate recognition for them. These provisions also divert their attention from their primary business and source of emissions. These provisions include:

- Limiting reporting entities to "legally distinct" organizations
- Establishment of an inadequate *de minimis* exclusion, and requiring onerous documentation of any *de minimis* exclusion actually claimed; and,
- Disallowance of registration of reductions from subentities by large emitting entities.

Limiting reporting entities to "legally distinct" organizations. Section 300.3(a) states that,

> "*A reporting entity must be composed of one or more* ***legally distinct*** *businesses, institutions, organizations or households. . . .*" [Bold typeface added.]

Within the electricity sector, adding the "legally distinct" element to this characterization seriously limits the flexibility afforded large integrated electricity generators such as Southern Company, where numerous plants are owned by each operating subsidiary and not as individual LLCs or other legal entities, while allowing significant broad flexibility to those with numerous plants organized as individual LLCs.

For example, some large integrated electricity providers, particularly those that operate in states with competitive retail markets, are legally organized to capture their generating units in one, or perhaps several, generating subsidiaries. Those same companies may also have separate transmission and other functional subsidiaries. Under the revised guidelines as proposed, these companies would be able to establish a reporting entity (or entities) that consists of essentially only their generation.

On the other hand, other large integrated providers, particularly those that operate in states where retail markets are still regulated, may be legally organized in a different way, with their generation owned by individual operating companies. These companies may operationally manage their generation under one or several business units. However, because these generation business units are not legally distinct, they could not be used as the basis for a reporting entity under the March 2005 proposal. This is the situation in which Southern Company finds itself.

As another case in point, a wind farm organized as an individual LLC or other legal entity would be able to report as an entity and register avoided emissions as reductions. However, if an integrated generator owns an identical wind farm along with a large set of fossil plants, it would be able to obtain the same level of registered avoidances *only if* it prepares a complete inventory *and* achieves a sufficient level of other reductions to result in net reductions greater than avoidances achieved by the wind farm.

We strongly urge DOE to remedy these disparities. One simple change that would be a good first step would be to redefine reporting entities to allow an entity to consist of a set of corporate business and other organizational units that comprise a single business activity, even though such business units may not be legally distinct. This would level the playing field among large integrated companies, allow for more meaningful reporting entities, and allow generators to focus on the GHGs from their primary sources of their emissions.

Establishment of an inadequate de minimis exclusion and requiring onerous documentation of any de minimis exclusion actually claimed. While the *de minimis* amount currently allowed is improved by elimination of the 10,000 ton absolute cap, a 3 percent allowance is still too stringent. The Technical Guidelines state, as part of the definition of "accuracy,"

> *"Resources, both human and financial, that can be devoted to inventory preparation are inevitably limited. In deploying limited resources, reporters should emphasize the emission sources that account for the largest share of total emissions at the possible expense of minor sources."* [Technical G/Ls, Section 1.A.2, page 3.]

Section 300.6(g)(1) of the March 2005 version states:

> *". . . there may be small emissions from certain sources that are unduly costly or otherwise difficult to quantify. A reporting entity may exclude particular sources of emissions or sequestration if the total quantities excluded represent less than or equal to 3 percent of the total annual CO_2 equivalent emissions of the entity. The entity must identify the types of emissions excluded and provide an estimate of the annual quantity of such emissions using methods specified in the Draft Technical Guidelines. . . . "*

Section 300.6(g)(2) of the March 2005 version goes on to state:

> *"After starting to report, each entity that excludes from its annual reports any de minimis emissions must re-estimate the quantity of excluded emissions after any significant increase in such emissions, or every five years, whichever occurs sooner."*

While this provision acknowledges that there will be some emissions that are too costly or time-consuming to quantify, the provisions for addressing such emissions are simply inadequate for alleviating the need to make disproportionately large, unreasonable expenditures and time commitments to comply with these guidelines. Even though the 3 percent ultimately may be excluded from the entity's inventory, the entity still must undertake a significant effort to identify all sources, no matter how small, and quantify emissions from them, even if only in a crude way. Simply identifying the myriad small sources within a entity the size of Southern Company would require a staggering level of time and money that would be totally inconsistent with the concept of "*emphasiz[ing] the emission sources that account for the largest share of total emissions at the possible expense of minor sources"* laid out in the definition of "accuracy" in the guidelines. Undertaking this mammoth task would divert generators' effort away from their primary business and source of emissions, i.e., their generation.

Further, the generators would have to repeat this inventory and quantification exercise every year. There may be emissions in excess of the 3 percent that are "unduly costly or difficult to quantify" that would, nonetheless, still need to be identified and quantified each year for registration. And, how else would they determine if there has been a "significant increase" that would require them to report on the exclusions more frequently than every five years?

The Guidelines refer to a "Simplified Emissions Inventory Tool" that can be used to quantify the *de minimis* emissions. This tool is not yet available for review, so there is no way to know how simplified it is. However, if this tool requires input on the number and type of sources within an entity, its use will still represent a significant effort. And the tool cannot be used for quantifying the emissions from those small sources that exceed the 3 percent threshold.

The revised guidelines still need a significantly better balance among completeness, accuracy, and reasonable cost and level of effort than what is provided in the current proposal. We would strongly urge DOE to move away from a specific quantitative tonnage or percentage exclusion to a more qualitative approach. Under this qualitative approach, entities would report the emissions and sequestrations from their significant business activities. In the case of electricity generators, they would still have to include the emissions from *all* of their generation units. For transparency, the entities also would need to identify what was included and what was not, as well as explain their choices. This qualitative approach also avoids the problem that entities would have to quantify literally all of their emissions to demonstrate that what they have excluded is within the *de minimis* allowance.

Alternatively, if DOE does choose to retain a quantitative *de minimis* allowance, we would urge that the percentage exemption be increased significantly to as much as 10 percent.

Disallowance of registration of reductions from subentities by large emitting entities. Section II.2 states,

> *"DOE believes that data that reflects entity-wide emissions and reductions are better indicators of the entity's overall contribution to greenhouse gas reductions and should therefore, be clearly distinguished from reports that are not entity-wide."*

Given DOE's belief and the special, "upper tier" status given for registration, we would expect that all entities registering would be required to meet the same standard. However, this is not the case. The March 2005 proposed guidelines have *more stringent* requirements for registration of reductions by large emitters (i.e., entities with average annual emissions more than 10,000 metric tons of CO_2 equivalent) than for small emitters. §300.6(a) states,

> *"Entity-wide inventories are a prerequisite for the registration of emission reductions by entities with average annual emissions of more than 10,000 metric tons of CO2 equivalent. Entities that have average annual emissions of less than 10,000 metric tons of CO2 equivalent are eligible to register emission reductions associated with specific activities without also reporting an inventory of the total emissions."*

And §300.7(b)(1) states,

> *"Entity-wide reporting is a prerequisite for registering emission reductions by entities with average annual emissions more than 10,000 metric tons of CO2 equivalent. Net annual entity-wide reductions must be based, to the maximum extent practicable, on a full assessment and sum total of all changes in an entity's emissions, avoided emissions, and sequestration relative to the entity's established base period(s)."*

And §300.7(c)(2) states,

> *"An entity reporting as a small emitter must report on one or more specific activities and is encouraged, but not required to report on all activities occurring within the entity boundary."*

This language gives entities with smaller emissions the substantial flexibility to isolate a portion of their activities for providing inventories and calculating reductions for registration, while denying that flexibility to entities with larger emissions, including electricity generators. While it may actually be easier for some small emitters to undertake a comprehensive emissions inventory than it is for a large emitter, small emitters are allowed to pick a subset of their activities (or even a single activity) for registration of reductions. There is no explanation as to why small emitters are not being held to the same high standard as the large emitters including electricity generators, yet are given the same "upper tier" recognition as those who meet more stringent requirements.

The bottom line is: if reporting on a single activity or sub-entity is sufficiently credible for registration by small emitters, it is also sufficiently credible for registration by large emitters. Since there is "special recognition" for registration, it is only appropriate that all

entities, regardless of size, meet the same standard -- face the same requirements and receive the same flexibilities. There should be fair and consistent treatment across all entities regardless of circumstance.

We strongly urge DOE to allow all entities regardless of size or type, including electricity generators, the same valuable flexibility to select a subset of their activities for compiling an inventory and registering reductions.

III. THE TECHNICAL GUIDELINES ESTABLISH A MORE STRINGENT APPROACH FOR QUANTIFYING EMISSION REDUCTIONS FROM ELECTRICITY GENERATION THAT IS SOLD TO OTHERS.

Section 2.2.2.1 of the Technical Guidelines states,

> *"Entities are encouraged to calculate reductions using emissions-intensity methods when feasible."* [Page 242].

The President's goal is based on emissions intensity, so it is not surprising that DOE has chosen to make the emission intensity approach in this section the preferred approach for determining emissions reductions.

Curiously, however, DOE has chosen to *prohibit* electricity generators from using the very approach that all others are encouraged to use. Section 2.2.2 of the Technical Guidelines states,

> *"Electricity generators and other producers of energy that report emissions associated with energy exports during their base period **must** use a calculation formula that combines the emissions intensity and avoided emissions methods (described in subsection 2.4.6), or use the absolute emissions method specified in subsection 2.4.2 of this chapter."* [page 242; emphasis added].

Under the formula described in Section 2.2.2.1, reductions are calculated simply by multiplying the improvement in the intensity from the base period to the reporting year *by* the output in the reporting year. However, for generators "exporting" some or all of their electricity outside of their entity, a different, more complex and stringent approach is used. Initially, the "exported" electricity is split into two components. The first component is equivalent to the level of electricity "exported" in the base period, while the second component (which will be called the "incremental generation" for purposes of this discussion) is equal to the change in output between the base and reporting periods. For the first component only, the reductions are calculated in the same manner as all other reporters do under Section 2.2.2.1, that is, by multiplying the change in the intensity from the base period to the reporting year *by* the output.

However, for the second component, the incremental generation, the generators cannot claim reductions based on the change in intensity between the base and reporting periods. They can only claim reductions for the incremental generation based on the amount that their intensity in the reporting year *is lower than* a benchmark rate specified by DOE. (The benchmark is currently set at the national average emissions rate for electricity generation.) In essence, DOE is setting a generation performance standard for

growth in generation beyond the base period, and are then allowing generators to claim reductions associated with the incremental generation *only* to the extent that their emissions intensity in the reporting year *beats* the standard.

Further, a generator is penalized if its emissions intensity in the reporting year is *above* the benchmark/standard and its output has grown since the base period. This "penalty" is determined by multiplying the amount that the intensity in the reporting year is *above* the benchmark *by* the incremental generation. This "penalty" is then subtracted from the reductions calculated for the first component (based on the improvement in intensity and the generation in the base period).

DOE explains their approach as follows:

> *"In general, emissions reductions are intended to recognize actions that contribute to reducing the energy intensity of the U.S. generating sector on the whole."* [Page 271, Technical Guidelines.]

This approach inappropriately singles out electricity generators for significantly more stringent treatment. For all other activities, the determination of intensity-related reductions is based on improvement in one's own emissions performance. There is no other industry or activity for which DOE:

- Requires reductions to improve the intensity of the industry as a whole;
- Sets an overall emissions standard for growth in an industry;
- Allows reductions only when the standard is beaten and only in the amount by which the standard is beaten; and,
- Reduces the reductions that can otherwise be claimed if the growth in output is produced in a way that fails to meet the standard.

Electricity generators are the only entities who are subject to this more stringent approach. There is nothing about the generation of electricity that warrants this different treatment. Further, this harsh treatment will only serve as a strong disincentive for generators to take actions that would make contributions to achieving the President's intensity reduction goal. We strongly urge DOE to remove the prohibition on using the standard intensity-based approach in Section 2.4.1 of the Technical Guidelines for generation of exported energy. All entities, including all generators of electricity, should be afforded the same opportunity to use this basic intensity approach (applying an entity's *own* intensity improvement to all production in a given year) when calculating reductions for reporting or registering under the revised 1605(b) guidelines.

IV. IT APPEARS THAT THE PROVISIONS FOR REPORTING OFFSETS ARE BURDENSOME AND UNWORKABLE, AND WILL PRECLUDE REPORTING OF MOST IF NOT ALL OF THE REDUCTIONS ACHIEVED AS OFFSETS.

Section 300.7(d) states:

> *"A reporting entity or aggregator under certain conditions may register net emission reductions achieved by third parties. . . . The reporting entity or*

> *aggregator must include in its report all of the information on the third party, including an entity statement, an emissions inventory (when required), an assessment of emission reductions and appropriate certifications, that would be required if the third party were directly reporting to EIA. . . . The report to DOE must also include a certification by the third party indicating that it has agreed that the reporting entity or aggregator should be recognized as the entity responsible for any registered reductions and that the third party does not intend to report directly to DOE ."*

Based on this language, it appears that the only way an entity can include reductions from offsets[1] in its 1605(b) report is to essentially take over the reporting or registering for the entity that owns the asset involved in achieving the reduction. The language also means that the entity that owns the asset would have to gather all the data needed as if it were reporting or registering on its own, provide all this information to the reporting entity, and then relinquish any and all reductions to the reporting party. And while the guidelines don't address this explicitly, it appears to be impossible for an entity with offsets for sale to sell to more than one entity, because that would lead to double counting. There appears to be simply no flexibility in the guidelines whatsoever to allow entities a more practical yet credible approach to reporting offsets under the proposed guidelines.

This set of conditions that must exist to meet the requirements is totally implausible. If the third party is going to go through the effort to collect the data, why wouldn't it just report itself? If it has reductions on its own beyond the offset activity, why would it relinquish them to the reporter? How many third parties would be willing to give comprehensive data on its own activities and emissions across its operations to a third party? What reporter that is not an aggregator would be willing to take on all the reporting for the third party?

This approach also creates an additional, prohibitively high barrier to actually undertaking an offset project. Even before you get to the reporting, there is significant time and resources involved in developing the offset project, finding credible partners, and actually implementing the project. Arrangements for the sharing of the reductions among the project's partners [including the owner(s) of the asset(s) involved] are part of this process. But if one is interested in being able to register the reductions associated with the offsets under 1605(b), it also would need to investigate whether the owner(s) of the assets involved in the project would be likely to have the required net reductions, and whether those owners would be willing to provide the data and relinquish all their reductions to the reporting party. Given the usual complexities and challenges with working out offset arrangements, the additional burdens from these offset provisions would likely discourage just about everyone seeking to report the GHG reductions from undertaking GHG reduction activities jointly with other entities. This effect is totally contrary to what would be needed to encourage joint activities that contribute to the President's 18 percent emissions intensity reduction goal. It is also totally contrary to the MOU between the Department of Energy and the electric power industry, which encourages the industry to work with others outside of the sector to achieve reductions. Such an approach to reporting the results of the offset projects is not supportive of this MOU element.

We strongly urge DOE to come up with a ***workable*** approach to capturing and reporting the emission effects of offset projects under 1605(b). One suggestion would be to allow

[1] For purposes of this discussion, "offset" will be used to describe a GHG reduction that occurs on property not owned by the reporting entity.

offset project partners (that do not own the assets involved but have the contractual rights to the reductions from the project) to include the offset activity within their own entity and organizational boundaries. Such an approach would be consistent with the language under §300.4(b)(2) and §300.4(b)(3), particularly if the partner(s) with the rights to the reductions are paying some of the cost of the offset activity. We recognize that some additional guidance would be needed to ensure that this is done in a credible manner, and would be willing to work with DOE to develop such guidance as it applies to our sector.

V. THE PROVISIONS RELATED TO BASE PERIODS AND CONTINUOUS REPORTING NEED ADJUSTMENT TO ALLOW FOR A SMOOTH, REALISTIC TRANSITION TO THE NEW GUIDELINES.

There is an inherent incompatibility among the timing of the President's emission intensity reduction goal, the timing of the expected finalization and effective date of these guidelines, and the provisions related to baselines and continuous reporting. In February 2002 the President announced his program that included establishing the 2012 national intensity goal, calling for voluntary actions to meet the goal, and directing DOE to revise the guidelines for reporting under 1605(b). Since then, both industries and individual entities have set voluntary goals in good faith, expecting that the actions they take in pursuit of those goals would be recognized in the revised 1605(b). Actions have already started in fulfillment of those commitments.

However, as it turns out, DOE has made some dramatic changes in the guidelines that require totally new methods and significant new data to be gathered and used. And DOE does recognize this. In the DOE workshop held on April 26-27, Mr. Friedrichs said,

> *"We recognize certainly that many companies aren't going to have sufficient records to go back in time and meet all of the requirements of the revised guidelines so that most companies are likely to establish a start year that's current or even in the immediate future."*

Yet to have a base period that ends in 2002, entities would have to do exactly what DOE recognizes that most of them can't do; that is, go back in time. And because of the continuous reporting" provision that requires them to report for every year beginning in the last year of their base period (2002), they can't simply start reporting in the current year, and continue each year thereafter. Barring that, entities are left with the less than desirable option of establishing a later start year and base period. However, in going to a later start year, they cannot record the full extent of their reductions because the reduction activities that occurred since 2002 become part of the baseline, essentially understating the true results of their actions. In other words, it is virtually impossible for entities that took action in good faith since 2002 (rather than waiting for the revised guidelines) to report and receive recognition for the reductions from those "early" actions. Even mandatory, legislative regulatory programs (either enacted or proposed) do not require such retroactive data collection and "compliance" for years between the baseline period and the first year of the program.

We strongly urge DOE to modify the Guidelines to allow transitional flexibility to enable entities to measure and reflect in the data base their true progress relative to 2002. Specifically, this transition would allow entities with baseline periods ending in 2002

through 2005 to begin their continuous reporting for the first full calendar year of data after the revised guidelines become effective, most likely reporting on 2006 in 2007. This change would make the system fairer and provide users of the database with better information.

VI. ITEMS WE CONTINUE TO SUPPORT

There are several notable elements that should remain intact in the final Guidelines.

Presumed Responsibility for Emissions Reductions. We support keeping DOE's presumption that the owner of an asset is the one responsible for any emission reduction, avoidance, and/or sequestration, while continuing to allow contract arrangements to take precedence over the presumption. However, as discussed elsewhere in these comments, we strongly urge DOE to simplify the approach to reporting emissions and emission reductions, avoidances, and/or sequestration when the "right" to report has been transferred to entities other than the owner(s) of the asset(s) involved.

Organizational boundaries. We support the provisions that allow entities the flexibility to use a variety of methods to define their organizational boundaries. This flexibility should be retained, including financial control, equity share, production share, and operational control as acceptable methods. Entities should also have the flexibility to use different methods as appropriate to the circumstances for different parts of the entity.

Third-party verification. We support the provisions in §300.11 that keep third-party verification optional.

Allowing compliance officer to certify report. We support DOE's decision to change the certification requirements to allow "an officer or employee of the entity who is responsible for reporting the entity's compliance with environmental regulation.

VII. LIST OF SMALLER, MORE TECHNICAL FIXES

There are also several smaller changes that are needed.

Changes need to be made to eliminate the conflicts in language related to avoided emissions. § 300.6(a) (page 66) clearly states that the emissions inventory does not include avoided emissions, and §300.7(b)(3) (page 72) seems to say that a reporter should not include in its assessment of reductions anything that is not a part of the entity's inventory. Taken together, these two statements would seem to indicate that one cannot count avoided emissions as part of its reductions. However, the Technical Guidelines talk about the method for quantifying avoided emissions. Changes are needed to eliminate the conflict and make these provisions related to avoided emissions internally consistent.

GDP deflator as mechanism for adjusting revenue or other dollar-based measures of output. Page 253 of the Technical Guidelines indicates that DOE will use the GDP deflator to convert output measures denominated in current dollars to constant dollars. However, using this very broad measure is likely to introduce significant bias into intensity

measures, which would also reduce the accuracy and reliability of the reductions reported. Using the GDP deflator to adjust items that have experienced a significantly greater price increase will overstate the output, leading to overstating the reduction in intensity and the related emissions reductions. Conversely, using the deflator for items with a significantly lower price increase will understate output, leading to understating the intensity and emissions reductions. We urge DOE to identify and use indices that are more specific to the product or industry associated with the item where output is denominated in dollars. Use of the GDP deflator should be used only as a very last resort.

Definitions for incidental lands, distributed energy, exported energy. The terms "incidental lands," "distributed energy," and "exported energy" appear in a variety of places, particularly in the Technical Guidelines. While one can certainly use a layperson's understanding for interpreting what is intended, the exact meaning of the terms as used by DOE is not totally clear. This could lead to incorrect application of the guidelines and rejection of reports. To alleviate this, we strongly urge DOE to provide explicit definitions for these terms as part of the Guidelines.

Use of NERC subregions for all factors. In a variety of places, the Technical Guidelines set "default" emission rates related to electricity production and use, including the "benchmark" rate on page 258, the rates for calculating indirect emissions from electricity use on page 139, and transmission loss factors on page 145. Sometimes the rates are national, sometimes regional. We strongly urge DOE to consistently use factors based on the NERC *subregional* level. Further, we urge DOE to provide annual updates to keep these factors current. This could easily be done with references to a website where the most current values could be found.

VIII. SUMMARY

Electricity generation produced 39% of the CO_2 emissions in the U.S. in 2003. Clearly, the continued success of the 1605(b) reporting system under the new guidelines will depend on the extent to which the power sector can and will continue to report. The sector will also play a critical role in determining the success of the President's voluntary program to reduce the emissions intensity of the U.S. economy 18% by 2012.

The revised guidelines as currently drafted provide do more to work against the President's goal than they do to complement any efforts to achieve it. Two elements that do much to discourage generator action and reporting at the highest level are the two-tiered system (registration and reporting) and the inability to report projects.

In addition to addressing these two elements, we strongly urge DOE to make the following changes:

- Allow reporting entities to consist of one or more major business units that constitute all of a major business activity (such as electricity generation), rather than limiting them to "legally distinct" entities;
- Change the *de minimus* exclusion to a qualitative determination, thereby truly allowing entities to exclude the emissions from sources that are "unduly costly or difficult to quantify;"

- Allow all entities, regardless of whether they are large or small emitters, to register emissions reductions from a subentity;
- Allow generators to use the same "standard" intensity-based approach (where reductions are based on the full improvement in the entity's *own* intensity) in Section 2.4.1 of the Technical Guidelines that all other entities can use;
- Develop a workable approach to capturing and reporting the emission effects of offset projects that could include allowing offset project partners to include the offset activity within their entity and organizational boundaries; and,
- Provide for a reasonable transition mechanism for entities choosing a baseline that includes some or all of the years 2002 through 2005 to begin continuous reporting requirements for the first full calendar year of data after the revised guidelines become effective.

These changes would go a long way toward making the revised 1605(b) a program that complements the President's national intensity reduction goal and allows generators to focus their time and resources on the emissions from their primary line of business.

Southern Company appreciates the opportunity to submit these comments, and looks forward to further discussion and work with DOE and EIA on these and other issues relating to the enhanced registry and improved guidelines. If there are any questions about this material, please contact Lee Ann Kozak at (704) 660-6717.

Sincerely,

Chris M. Hobson
Environmental Affairs Senior Vice President

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